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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUBCOMMITTEE

Thirty-fourth session

SUMMARY RECORD OF THE 581st MEETING

Held at the Vienna International Centre, Vienna,
on Tuesday, 28 March 1995, at 10 a.m.

Chairman: Mr. MIKULKA (Czech Republic)

CONTENTS

General exchange of views (*continued*)

Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union (*continued*)

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The meeting was called to order at 10.15 a.m.

GENERAL EXCHANGE OF VIEWS (*continued*)

1. **Mr. ZVEDRE** (Russian Federation) said that the present session took place at a time when international cooperation in the peaceful exploration of space had replaced the confrontation of the cold war era. The rapid advances made in space technology should be adequately reflected in progressive multilateral regulation of space activities and in the Committee's perception of its work. His delegation was keen to seek new areas in which cooperation might be pursued, for example space debris law. In the near future the Subcommittee might usefully discuss the establishment of a universal legal regime for preventing the pollution of outer space.

2. The delimitation of airspace and outer space was an issue of great importance and had been on the Subcommittee's agenda for some 30 years. Although progress towards a consensus on the subject remained difficult to achieve, an attempt should be made at the present session to reconcile opposing views. The world's radically altered political situation should be properly reflected in that process and might become an element in discussions on the matter between his country and the United States of America. The accumulation and dissemination of information on different aspects of delimitation increased the chances of its being the subject of proper scientific, technical and legal evaluations in the near future. His delegation intended to pursue discussion of the proposed set of principles on the use of the geostationary orbit. Any instrument for regulating its use would have to be based on the practices of international cooperation and the agreement of all groups of States.

3. The Subcomittee's earlier discussion of outer space benefits opened up the prospect of a new basis being laid for long-term decisions on major aspects of space exploration which would take account of the interests of all States. His delegation hoped that at the present session the Subcommittee would make progress in its discussion of the working paper put forward by countries of the Group of 77 on principles regarding international cooperation in the exploration and utilization of outer space for peaceful purposes (A/AC.105/C.2/L.182/Rev.2) and that it would achieve results in that area which were generally acceptable.

4. In conclusion, his delegation endorsed the idea that the Subcommittee's methods of work should be streamlined, and it believed that good solutions could be found regarding the inclusion of new items on the Subcommittee's agenda.

5. **Mr. MACLURE** (United States of America) said that his country took the activities of the Committee and its Subcommittees very seriously. In the previous 10 years the United States had contributed to making the Committee a meaningful forum for the promotion of international cooperation in the peaceful uses of outer space. In pursuance of that commitment, his delegation and others had sought consistently to maintain the principle of consensus as the sole basis for effective conduct of the Committee's work. At the forty-ninth session of the General Assembly, his country had been unable to support the resolution on enlargement of the Committee's membership (resolution 49/33) since the text had not reflected the consensus agreement reached at the Committee's previous session, as reflected in paragraphs 156 and 157 of document A/49/20. Regrettably, the commitment to consensus had been discarded. Consensus was the only basis on which the Committee and its Subcommittees could work effectively and on which the United States could participate in their activities.

6. His Government had completed a review of its position on the Principles Relevant to the Use of Nuclear Power Sources in Outer Space. It had determined that, while they had no binding effect on national programmes, its policy and practice in the present and planned use of nuclear power sources in outer space was fully consistent with the intent of the Principles. His delegation did not believe that the Committee and its Subcommittees should continue to discuss the Principles at present, nor should they address matters relating to the militarization of outer space. Disarmament questions were properly the mandate of the Conference on Disarmament. Moreover, it would be inappropriate for the Legal Subcommittee to consider whether legal norms should be developed for dealing with space debris, or for any recommendations to be made in regard to such norms, until the Scientific and Technical Subcommittee had discussed the question of space debris adequately and reached informed conclusions on the subject.

7. He concluded by stressing the need for the Legal Subcommittee to improve its methods of work.

8. **Mr. HE Qizhi** (China) said that the continued expansion in the use and exploration of outer space made it important to intensify the development of space law at the same time. The Subcommittee should play a positive role in that process.

9. With regard to agenda item 3, concerning nuclear power sources, the adoption of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space had been a significant step towards the establishment of a legal regime for that activity. While the Principles would eventually need to be refined in the light of technological developments, there was no need for a hasty revision. The item should simply remain on the Subcommittee's agenda. Any revision of the Principles should take full account of both the manifest advantages and the enormous risks involved in the use of nuclear power sources in outer space, as well as the fact that the impact of nuclear accidents in space transcended national boundaries. The stringent prevention of such incidents must be the key objective, in the interests of protecting the global environment and humanity against the effects of nuclear radiation. The use of nuclear power sources in outer space should be confined to missions with a peaceful purpose which could not reasonably be conducted with non-nuclear power sources.

10. Turning to agenda item 4, on the definition and delimitation of outer space, he said that that issue remained a matter of contention. His delegation believed that the Subcommittee should continue its process of patient consultation with a view to ultimate agreement. The draft questionnaire concerning aerospace objects circulated at the thirty-second session (A/AC.105/C.2/1993/CRP.1) and the note on the questionnaire circulated at the thirty-third session (A/AC.105/573, annex II, para. 14) might serve as a basis for consideration of the subject at the present session.

11. The legal regime governing the geostationary orbit should be based on the principles of equity, economy and effectiveness, with account being taken of the interests involved, especially those of the developing countries, and it should conform to the procedures of the International Telecommunication Union (ITU). The Committee and the Subcommittee had a definite role to play in the formulation of rules on the use of the geostationary orbit. The Committee should strengthen its cooperation with ITU when dealing with that question. His delegation looked forward to progress at the present session on the basis of continued discussion of the Colombian working paper on the geostationary satellite orbit (A/AC.105/C.2/L.192).

12. With regard to agenda item 5, concerning outer space benefits, he hoped that at the present session the Subcommittee would make substantive progress in the discussion of principles regarding international cooperation in the exploration and utilization of outer space for peaceful purposes.

13. The changes which had occurred in the international situation gave the Committee a favourable opportunity for creating an enhanced international space legal order within the United Nations system, as well as for promoting international cooperation in the peaceful use of outer space for the benefit of mankind. To that end, the Governments of China and the United States had recently signed a memorandum of agreement regarding international trade in commercial launching services.

14. **Mr. McCARTHY** (Australia) said that the Subcommittee should devote substantial time to reviewing its working methods, doing so at meetings which were not required to be utilized, or which were not fully utilized, for other purposes, and that it should take the matter up earlier in the session than planned at present. The Subcommittee should be flexible on that question as well as on the length of the present session, which should depend on its agenda. Any decision to shorten the session should be taken without prejudice to the length of future sessions should an expanded agenda then require such a decision to be reversed.

15. **Mr. SUAREZ** (Mexico) said that for his country the Subcommittee's tasks, including the definition and delimitation of outer space and the characterization and utilization of the geostationary orbit, were a means of laying the basis, by universal agreement, for a legal order in outer space. The items on the agenda were therefore of great importance and called for active negotiation and the search by the Subcommittee for new and imaginative approaches to the issues involved. As had been urged in the past, the Committee on the Peaceful Uses of Outer Space should strengthen its cooperation with bodies such as the Conference on Disarmament, the International Telecommunication Union, the International Civil Aviation Organization and the International Maritime Organization, with a view to establishing effective machinery for coordinating their activities in regard to outer space.

16. His delegation also called for vigorous action to deal with the question of space debris. All States, whether developed or developing, should work together in establishing a framework of specific legal principles embodying the right to prevent the pollution of outer space, as well as in defining ways and means of ensuring universal compliance with space law. His Government favoured moves to strengthen the Convention on Registration of Objects Launched into Outer Space, in collaboration with the Conference on Disarmament. It welcomed the work being done by the Ad Hoc Committee on the Prevention of an Arms Race in Outer Space, and in particular the "draft Guidelines regarding Measures on Confidence Building and Predictability in Outer Space Activities" (see the 1994 report of the Conference on Disarmament (A/49/27), para. 32).

17. The Subcommittee should comply fully with its mandate to consider the question of the Principes Relevant to the Use of Nuclear Power Sources in Outer Space, with particular reference to those principes which dealt with safety and responsibility. Moreover, nine years had elapsed since the adoption of the Principles Relating to Remote Sensing of the Earth from Space and considerable scientific and technological progress had occurred during that period. It was therefore time for the Subcommittee to explore the possibility of converting that set of principles into an international agreement, with the consequent expansion of the legal order for outer space.

18. In conclusion he urged the Subcommittee to make the most productive possible use of its time.

19. **Mr. HECKER** (Germany) said that there was no necessity for an early review of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space adopted by the General Assembly in December 1992.

20. Concerning the definition and delimitation of outer space, as well as matters relating to the geostationary orbit, equitable access to and rational use of the geostationary orbit was assured thanks to the work of ITU and there was currently no need to continue the discussion.

21. With regard to agenda item 5, concerning space benefits, the French and German delegations would submit a declaration explaining the practice and procedure followed by their Governments to ensure mutually beneficial and fruitful cooperation (see document A/AC.105/C.2/L.197). The declaration was meant as a constructive contribution towards preventing deadlock in the debate.

22. His delegation would welcome a flexible allocation of time to the various subjects and believed that the current session could be shortened, without prejudice to future sessions.

23. **Mr. RIANOM** (Indonesia) noted that General Assembly resolution 49/34, in operative paragraph 8, called on the Chairman of the Subcommittee, at the present session, to conduct extensive, open-ended informal consultations on the working methods and agenda of the Subcommittee, including consideration of possible additional agenda items. Time saved could also be used to address the problems of space debris and related issues.

24. Regarding the geostationary orbit, his delegation still considered that a *sui generis* legal framework governing the utilization of the geostationary orbit, complementary to the existing space law instruments, was particularly important in view of the unique characteristics of the geostationary orbit.

25. With regard to space benefits, his delegation was convinced of the need for legal regulations to strengthen international cooperation and facilitate developing nations' access to the benefits of space activities. Such international cooperation should address the ever-widening gap in space technology between the developed and developing nations. His delegation noted that significant progress had been made at the last session.

26. The Use of Nuclear Power Sources in Outer Space was a significant issue; such use should be monitored, starting with problems of launching and re-entry. A study of the development and use of nuclear power sources and research into possible negative consequences for people, property and the environment required urgent attention.

27. **Mr. GONDANE** (India) said that the progress in the exploration and peaceful uses of outer space over the past decades had demonstrated their immense relevance to human development. The benefits of space technology in many countries, including developing countries, had shown the need to spread such peaceful uses more widely and more rapidly. International cooperation was essential and the Committee on the Peaceful Uses of Outer Space, with its two Subcommittees, had a key role. The Legal Subcommittee should work not only on the regulation of States' activities in outer space, but also on legal principles for promoting international cooperation in such a way as to make access to and use of outer space easier and effective for all States, particularly developing States, in the true spirit of the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies (Outer Space Treaty).

28. Regarding the question of reviewing the Principles Relevant to the Use of Nuclear Power Sources in Outer Space, consensus on the Principles had been achieved after much deliberation and they should first of all be observed and implemented by the international community. The Scientific and Technical Subcommittee

was still discussing possible approaches to the revision of the Principles, but more time was needed. Any revision should serve to facilitate application, rather than weaken the agreed safety standards.

29. Outer space should be defined clearly and distinguished from airspace, which was within the sovereignty of each territorial State. The factual, scientific and technological aspects of the allied aerospace systems must also be clarified.

30. Regarding outer space benefits, although significant progress had been achieved in peaceful space applications there were many obstacles hindering States, particularly developing States, from having access to outer space and taking full advantage of space technology for peaceful socio-economic and cultural development. Despite the 1967 Outer Space Treaty, in practice there was no universality of benefits. Legal measures must be found to redress the situation. As India's experience in the application of space technology had shown, the needs of developing States were broad and diverse and applications had to take account of the specific situations of States. Appropriate development of indigenous capabilities in developing States was essential to develop applications on an effective, viable and continuous basis. International cooperation should be made available on a non-discriminatory basis, it should be timely and it should facilitate the development of indigenous capabilities. It should provide for the transfer of knowledge, technology and material resources. It should promote equitable benefits, and ways should be found of avoiding additional burdens in terms of technological or other demands on developing States which had not been able to access outer space but chose to do so in future. Coordinated and regulated efforts were needed to preserve the space environment, in the true spirit of the Outer Space Treaty.

31. The working paper submitted by a number of developing countries (A/AC.105/C.2/L.182/Rev.2) should be seen as a contribution to enriching international cooperation and developing the principles of the Outer Space Treaty, and his delegation strongly supported the ideas reflected therein as a basis for the progressive development of space law.

32. **Mr. ARIZAGA** (Ecuador) said that paragraph 4 of General Assembly resolution 49/34 clearly set out the subjects for examination by the Subcommittee.

33. His delegation agreed that there was no need to set up a working group to consider the question of review of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space at the current session, but wished to stress the importance it attached to that subject, since nuclear power should be used only as a last resort and activities involving it should be monitored.

34. His delegation considered that agenda item 4 was of particular interest and that, with the proposals submitted at recent sessions of the Subcommittee, the discussion had been enriched. His delegation could not support any attempt to shelve the subject. It should remain on the agenda and the working group should proceed with the relevant examination.

35. Year after year, his delegation had expressed its concern about the pollution of outer space in general, and the geostationary orbit in particular. The amount of space debris and the constant increase in such debris were being studied by the Scientific and Technical Subcommittee. His delegation supported the view that the topic should be included on the agenda of the Subcommittee.

36. His delegation welcomed the draft resolution contained in document A/AC.105/C.2/L.182/Rev.2 and looked forward to hearing the sponsors' explanations. International cooperation was an important instrument

in the exploration and utilization of outer space, which should benefit all countries, taking particular account of the needs of developing countries. Such cooperation should permit access, *inter alia*, to information, materials and equipment, with a view to promoting and facilitating technology transfer. The whole international community would benefit if developing countries had a greater endogenous capability in that area, since support for their programmes would generate progress in space science and technology, which would be to the economic and social benefit of the world's peoples.

37. It was important for the Subcommittee to be as flexible as possible in its work, but care should be taken to ensure that any change in working methods did not adversely affect the basic issues under discussion. The discussions should not be curtailed so as to shorten the session, nor was it desirable to split subjects that were customarily combined merely in order to have two agenda items in place of one.

38. **Mr. KOVACS** (International Telecommunication Union) introduced the thirty-fourth report of ITU on telecommunication and the peaceful uses of outer space (A/AC.105/603). A second section of the report, including information from member countries, would be available later.

39. The new Constitution and Convention of ITU had come into force on 1 July 1994. They contained the regulatory bases for the allocation of geostationary orbit and radio-frequency spectrum resources and their distribution among member countries, the user community. Article 44 of the Constitution called for radio-frequencies and the geostationary orbit to be used efficiently and for countries to have equitable access to both. Further detailed regulations governing orbit and spectrum use were contained in the International Radio Regulations, which constituted a binding international treaty. The legal regime embodied in the Regulations had been established by major ITU world radio communication conferences.

40. In order to put the above-mentioned principles of efficient use and equitable access into effect, there were two major mechanisms for sharing orbit and spectrum resources, namely a priori planning procedures (to meet the need for equitable access to orbit/spectrum resources) and coordination procedures (to ensure efficiency in orbit/spectrum use).

41. In the establishment of ITU's space-related legislation, emphasis had been placed on efficient and rational utilization. The concept had been implemented on a "first come, first served" basis. The procedure of "coordination before use" was based on the principle that the right to use a satellite position was acquired through negotiation with the other administrations concerned by the actual use of the same portion of the orbital segment. That procedure was a way of achieving efficient spectrum/orbit management; it served to fill gaps in the orbit as needs arose and resulted, in principle, in a homogeneous orbital distribution of space stations. On the basis of the Regulations, and in the frequency bands where the concept was applied, member administrations designated the volume of orbit/spectrum resources required to satisfy their telecommunication needs. The national administrations then assigned frequencies and orbital positions, applied the appropriate procedures for the space segment and earth stations of their networks, and assumed continuing responsibility for the networks.

42. The progressive exploitation of the orbit/frequency resources and the resulting likelihood of congestion of the geostationary orbit had prompted ITU member countries to give increasing consideration to equitable access in respect of orbit/spectrum resources. That had resulted in the creation of frequency/orbital position plans in which a certain amount of frequency spectrum was set aside for future use by all countries, particularly those currently not in a position to make use of such resources. Those plans, in which each country had a predetermined orbital position associated with the free use, at any time, of a certain amount

of frequency spectrum, together with the associated procedures, guaranteed all countries equitable access to spectrum/orbit resources. Such plans governed a considerable part of the frequency spectrum and the most resource-demanding communication services.

43. ITU's legal regime governing the use of the geostationary orbit was the result of more than 30 years of continuous effort by ITU member countries. The regulatory framework had been constantly adapted to changing circumstances and had achieved the necessary flexibility to satisfy the two major requirements of efficient use and equitable access. The increasing demand for spectrum/orbit use was attributable to many factors, including not only technological progress but also political, social and structural changes around the world and their impact on the liberalization of telecommunication services, the introduction of non-geostationary-orbit satellite systems for commercial communications, growing market orientation, a change in the way the widening market was shared between private and public service providers and the general globalization and commercialization of communication systems. The 1994 ITU Plenipotentiary Conference had called for a new in-depth review of ITU spectrum/orbit resource allocation procedures, the results of which would enable the World Radiocommunication Conferences in 1995 and 1997 to revise the legal regime applicable to all space applications and services.

44. The ITU report contained detailed information on the planned satellite systems notified to the ITU Radiocommunications Bureau and on the publication, coordination, notification and registration procedures applicable under the Radio Regulations and the resolutions of the World Administrative Radio Conferences.

45. The 1995 and 1997 Radiocommunication Conferences had important space-related issues on their agenda. Major issues were: review, possible simplification and approval of new radio regulations; consideration of new frequency allocation requirements and related provisions for geostationary and non-geostationary mobile-satellite services; revision of broadcasting-satellite plans and their associated provisions.

46. **Mr. SCHALLY** (Austria) said that his delegation agreed that there was no need for further review of the question of nuclear power sources. It had noted the proposals on item 5 (outer space benefits) made by the representative of Germany. It welcomed the informal consultations; such consultations were very important for planning the work of the Legal Subcommittee.

MATTERS RELATING TO THE DEFINITION AND DELIMITATION OF OUTER SPACE AND TO THE CHARACTER AND UTILIZATION OF THE GEOSTATIONARY ORBIT, INCLUDING CONSIDERATION OF WAYS AND MEANS TO ENSURE THE RATIONAL AND EQUITABLE USE OF THE GEOSTATIONARY ORBIT WITHOUT PREJUDICE TO THE ROLE OF THE INTERNATIONAL TELECOMMUNICATION UNION (*continued*) (A/AC.105/573 and A/AC.105/605; A.49/20)

47. **Mr. WILKE** (Netherlands) said that the current item had first appeared on the agenda of the Committee on the Peaceful Uses of Outer Space as long ago as 1959. Since that time, various solutions to the problem of the delimitation and definition of outer space had been put forward, a questionnaire had been distributed, and the Scientific and Technical Subcommittee had looked into the matter, but none of the proposed solutions had been entirely satisfactory from the technical, scientific, legal and political points of view. During that period, space exploration had undergone rapid advances and constant changes, bringing benefits to more and more countries. However, there was no evidence to suggest that the lack of a legally fixed boundary between airspace and outer space had seriously hampered those developments.

48. His delegation therefore believed that the question of an actual need for such a legal demarcation line should be reconsidered. The Subcommittee could more usefully concentrate its efforts on addressing possible problems stemming from differences in the law applicable to airspace and that applicable to outer space, such as the question of the law applying in regard to future modes of air transportation passing through outer space *en route* from one point to another on Earth, and the law applicable in respect of spacecraft that took off as aircraft and returned from space and landed as aircraft. The list of questions on aerospace objects drawn up by the Russian Federation (see document A/AC.105/514, annex IV, section B) was a step in the right direction, and his delegation believed that the debate on the delimitation and definition of outer space should be pursued on the lines suggested in that paper.

49. **Mr. BARSEGOV** (Russian Federation) said that, although the item under discussion had been on the Subcommittee's agenda for some considerable time, it had still not been possible to reach agreement on the key practical aspects of the issue or adopt a common position. A spirit of moderation was called for on the part of member States with a view to seeking a new focus, and they should be willing to adapt their methodological approaches to the problem of the delimitation of outer space.

50. Even though no consensus had emerged from the Subcommittee's many years of discussion of the topic, valuable experience had been accumulated over that time. The paper that had been submitted by his delegation sought to provide the key to an understanding of the issue and to the implementation of proposals and the adoption of the most justifiable course of action. The military and political context existing at the time when the theory of the delimitation of outer space had first been expounded had changed. The Subcommittee could now direct the focus of its attention more precisely. The course of its discussions should be governed by a readiness to adopt a businesslike and objective approach free of politically inspired rhetoric. The criteria for analysing the issue of delimitation could be reviewed so as to orient the Subcommittee in its search for a solution to the problem. Regarding the legal aspects involved, it was clear that juridical science valued precision in the utilization of legal concepts. There were good arguments for discussing the delimitation question. Defining the boundaries of national sovereignty was not an academic pursuit; it was an important issue in the currently evolving international scene. The proposal that the legal aspects of aerospace systems should be examined was motivated by a desire to provide new impetus for developing the conceptual points. The responses received from a number of States to the questionnaire on aerospace objects would contribute towards answering some of the questions involved. Final assessment of the scientific, technical and legal aspects would be possible in due course.

51. As the United Nations system as a whole underwent major reforms, the Subcommittee should make its own contribution to that process by enhancing the efficiency of its work and its practical output. Progress in resolving the delimitation issue would confirm its ability to do that.

52. **Ms. KATO** (Japan) said that her Government saw no need to establish any principles on the geostationary orbit, for three reasons. First, in accordance with article II of the Outer Space Treaty, outer space was not subject to national appropriation by claim of sovereignty, even if utilized or occupied continuously by a country. Secondly, legal principles governing the equitable use of the geostationary orbit had already been established in the International Telecommunication Convention, and it was therefore more appropriate for ITU rather than the Legal Subcommittee to discuss a priori planning or plans for allocating frequencies and orbital positions as set out in that Convention, with a view to their possible revision. Thirdly, since the geostationary orbit was at present used solely for telecommunication purposes, no practical advantage would be gained by separating the political and technical aspects of the issue.

53. **Mr. FADYL** (Indonesia) said that the geostationary orbit, as part of outer space, had special characteristics and was a limited natural resource that could become saturated. His delegation therefore believed that the future legitimate needs of all countries to place satellites in geostationary orbit should be equitably guaranteed. Accordingly, a *sui generis* legal regime should be established in order to regulate access to and the use of the geostationary orbit, taking particular account of the needs of developing countries and their special geographical features. The work of the Committee and its subsidiary bodies and the work of ITU in developing principles for the use of the geostationary orbit should be regarded not as contradictory but as complementary. ITU was responsible for regulating the technical aspects of the use of the geostationary orbit, primarily with regard to telecommunications. However, other aspects certainly needed to be taken into consideration in regulating the rational, efficient, economical and equitable use of the geostationary orbit.

54. A definition of the geostationary orbit had been proposed in the working paper submitted as document A/AC.105/C.2/L.192 at the Subcommittee's previous session, but no agreement had been reached at that time. In his delegation's opinion, that working paper could be used to develop legal principles for regulating certain aspects of the utilization of the geostationary orbit, and perhaps provide a legal solution for ensuring equitable access through the establishment of preferential rights for developing countries and countries currently having no access to the orbit.

55. In view of the geographical configuration of Indonesia, a reliable national communications system and continuous satellite operation were essential for his country's development. Orbital slots and radio-frequencies for satellite operation should therefore be guaranteed.

56. **Mr. REY CORDOBA** (Colombia) said that his delegation appreciated the remarks made by the representative of the Russian Federation concerning the approach that the Subcommittee should adopt in examining the agenda item under consideration. It had been discouraging to see no change in the positions adopted by some States in spite of changed circumstances. The Subcommittee had a mandate to make an unprejudiced and non-political study of the legal aspects of the definition and delimitation of outer space and should make positive efforts to advance its work to that end.

The meeting rose at 12.10 p.m.